

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION IV

CA06-1203

MAY 2, 2007

LEXICON, INC. and LIBERTY
MUTUAL INSURANCE COMPANY
APPELLANTS

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F504371]

V.

MANUEL SERNA

APPELLEE

AFFIRMED

Appellants Lexicon Inc. and Liberty Mutual Insurance Company appeal the August 1, 2006, decision of the Arkansas Workers' Compensation Commission (Commission) finding that appellee Manuel Serna proved by a preponderance of the evidence that his complaints of low-back pain were causally related to an incident occurring on January 21, 2005, making his back injury compensable. Appellants contend that the Commission's findings are not supported by substantial evidence and are contrary to the law. We affirm the Commission's decision.

On January 21, 2005, Serna was struck on his head by a sixty-to-seventy pound piece of steel falling from about eight feet above him. Serna was wearing a hard hat at the time, and the marking from the falling steel was on the top of the hat, about two inches off center. Appellants accepted a compensable head injury which was treated as a medical-only claim.

Subsequently, Serna asserted a compensable low-back injury relating to the same incident. Appellants controverted compensability of the low-back injury.

At the hearing before the administrative law judge (ALJ), Serna testified that he had been knocked unconscious by the blow to his head, but no other witnesses corroborated this statement. Serna refused formal medical treatment on the day of his injury, but was treated with ibuprofen and ice packs and sent home. Serna speaks Spanish, and the parties agree that an interpreter was present after the initial injury. The injury occurred on a Friday, and Serna claimed that he asked his employer if he could see a doctor on the following Monday, but was told to wait because he was probably going to be sore for a few days. Jose Garcia, Serna's coworker who helped translate for Serna at times, corroborated this in his testimony. Garcia further testified that Serna complained of back pain on Tuesday. Appellant's safety manager testified that Serna first asked for medical attention at the end of January, and he was immediately sent to Dr. Williams.

On January 31, 2005, Serna saw Dr. John Williams and was accompanied on that visit by a translator, Jorge Torres. The nurse's notes indicate that Serna complained of head, neck and back pain. Dr. Williams recalled Serna complaining to him of only head and neck pain on that visit. Dr. Williams x-rayed Serna's head and neck and allowed Serna to return to work. Appellant's safety manager testified that even though Dr. Williams released Serna to return to work without restriction, he was kept on light duty for an extended period of time because Serna said he was sore. The safety manager claimed that Serna never complained of

his back pain until the end of April or the first of May, and when he heard this new complaint, Serna was sent back to Dr. Williams in April.

After Serna's January visit to Dr. Williams, he visited a Spanish-speaking doctor in Missouri, Dr. Granada, without his employer's approval. Dr. Granada suggested that Serna be given light-duty work and scheduled a follow-up appointment. Again on March 9, 2005, Dr. Granada wrote that Serna needed to be on light duty until an MRI of the spine could be done. The employer did not acknowledge these light-duty slips because Dr. Granada was not an approved company doctor.

Serna returned to Dr. Williams on April 7, 2005, at which time a diagnosis of lumbar musculo-skeletal pain was given. The safety manager testified that Serna last worked for his employer around May 15, 2005, and was terminated for failing to show up to work for several days without a doctor's excuse. Serna returned to Dr. Williams on May 23, 2005, and received a diagnosis of thoracic and lumbar pain. On June 13, 2005, Dr. Williams's notes reflect an MRI had disclosed a mild-diffused-disc bulge at L4-5. Dr. Williams suggested that Serna be referred to Dr. Yao for a nerve-conduction study, but by that time the claim had been controverted and no further medical care was performed.

Dr. Williams opined that he could not say to any reasonable degree of medical certainty that any low-back problems of which Serna complained were the result of the incident on January 21, 2005. He further stated that it was unlikely that Serna's low-back pain was associated with the January 21, 2005, incident.

The ALJ issued his opinion on February 15, 2006, stating that the record supported multiple complaints of pain involving Serna's head, neck and back. Further, he found objective medical evidence supported the finding of a low-back injury, specifically Dr. Granada's early suggestion of an MRI and the results of the later MRI which disclosed a disc bulge at L4-5. The ALJ noted that the treating physician had requested further diagnostic tests, which had been denied by appellants. He found that the appellants were not justified in terminating all medical treatment and found them responsible for all outstanding medical treatment concerning Serna's back. The Commission adopted the ALJ's opinion on August 1, 2006, and this appeal was timely filed on August 16, 2006.

In appeals involving claims for workers' compensation, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirms the decision if it is supported by substantial evidence. *See Kimbell v. Ass'n of Rehab Indus. & Bus. Companion Prop. & Cas.*, 366 Ark. 297, __ S.W.3d __ (2006). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Dorris v. Townsends of Ark., Inc.*, 93 Ark. App. 208, __S.W.3d __ (2005).

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Patterson v. Ark. Dep't of Health*, 343 Ark. 255, 33 S.W.3d 151 (2000). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Id.* The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Thus, we are foreclosed from determining the credibility and weight to be accorded to each witness's testimony. *Arbaugh v. AG Processing, Inc.*, 360 Ark. 491, 202 S.W.3d 519 (2005). As our law currently stands, the Commission hears workers' compensation claims de novo on the basis before the ALJ pursuant to Ark. Code Ann. § 11-9-704(c)(2), and this court has stated that we defer to the Commission's authority to discount the testimony of any witness, even a claimant, as not credible. *See Bray v. Int'l Wire Group*, 95 Ark. App. 206, ___ S.W.3d ___ (2006).

Appellants argue that the Commission's decision is not supported by substantial evidence. Appellants contend that Serna has not shown his back injury to be compensable under the statute because the evidence shows that he did not complain of lower-back pain immediately after the accident or in the weeks that followed. Appellants claim that the only testimony that supports his claim of back pain was Serna's own. Further, appellants assert that

Jose Garcia testified that Serna complained of back pain “way after” the initial injury. Serna points out that Garcia testified that Serna called him on the night of the incident and complained of back pain, and further testified that Serna asked to be sent to a doctor on Monday and complained of back pain on Tuesday.

Appellants contend that Todd Barnard, safety manager for employer, testified that Serna did not complain of lower-back pain on the day of the accident. He stated that Serna did not complain to him of lower-back pain until the end of April or first of May. Serna asserts that Barnard specifically stated that Serna did not ask to see a doctor on the Monday following the accident. He points out that Jose Garcia, who was translating for Serna on that Monday, testified that Serna did ask to see a doctor.

Appellants argue that Dr. Williams testified that when he first saw Serna, ten days after the accident, Serna did not complain of lower-back pain. He stated that Serna complained of back pain on his April 7, 2005, visit for the first time. On the other hand, Serna points out that Dr. Williams’s nurse’s notes from the January visit indicate that Serna complained of having head, neck and back pain.

Appellants claim that the bulk of the evidence indicates that the lower-back problem of which Serna complains simply had not manifested itself anywhere near the time of the accident. They contend that Dr. Williams stated that he was unable to state to any reasonable degree of medical certainty that any lower-back problems that Serna may have are the result of an incident on January 21, 2005. Appellants argue that Dr. Williams opined that had the lower-back problem been caused by the January 21, 2005, incident, he would have expected

such complaints to have arisen sooner than over two months later. Appellants contend that the ALJ did not consider this medical opinion and disregarding it was error. It is the province of the Commission to weigh conflicting medical evidence, but the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 48 S.W.3d 544 (2001). Appellants argue that all the medical evidence addressing the issue of a causal link came from Dr. Williams, and all that evidence runs counter to any such causal connection.

The Arkansas Supreme Court addressed the issue of whether objective medical evidence of causation is elemental to proper proof of a compensable injury in *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), by relying on this court's reasoning as follows:

In *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997), a worker alleged injury to his back when he fell while pulling a tarp over a load on a truck. The worker went to the emergency room and complained of neck pain, but it was not until several weeks later that an MRI revealed herniation at C4-C5 in his spinal column. The employer contested compensability. It contested it, not as to the existence of the injury, but as to the injury's causation by a work-related incident. The employer contended that objective medical evidence was necessary to show that the injury occurred on the alleged date or while working for the employer. The court of appeals held to the contrary, stating, 'Were we to interpret the Act so strictly as to require objective medical evidence to prove nonmedical elements of compensability, we would defeat the overriding legislative intent. Consequently, we hold the requirement that a compensable injury must be established by medical evidence supported by objective findings applies only to the existence and extent of the injury.' *Id.* at 280, 950 S.W.2d 472.

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We therefore adopt the holding in *Millican* that objective medical evidence is necessary to establish the existence and extent of an injury but not essential to establish the causal relationship between the injury and a work-related accident. The plethora of possible causes for work-related injuries includes many that can be established by common-sense observation and deduction. To require medical proof of causation in

every case appears out of line with the general policy of economy and efficiency contained within the workers' compensation law. To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident but not in every case.

VanWagner, 337 Ark. at 446-47, 990 S.W.2d at 524.

Appellants claim that the instant case is such a case where medical evidence is necessary to establish that Serna's back injury resulted from the January 21, 2005, incident. Further, appellants claim that Serna failed to establish the existence and extent of a low-back injury by objective-medical evidence. Appellants urge this court not to accept Serna's self-serving testimony because he has an interest in the outcome of the case. *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W.2d 811 (1998).

Serna argues that there is no requirement that medical testimony be based solely or expressly on objective findings, only that the record contain supporting objective findings. *Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 118, 975 S.W.2d 857 (1998). Matters of credibility are exclusively within the Commission's domain. *Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W.2d 158 (1996). Where there are contradictions in the evidence, the Commission is allowed to reconcile the evidence and does not have to reject the testimony nor consider a claimant's testimony as uncontroverted. *Ark. Dep't of Health v. Williams*, 43 Ark. App. 169, 863 S.W.2d 583 (1993). The authority of the Commission to resolve conflicting evidence also extends to medical testimony. *Foxx v. Am. Transp.*, 54 Ark. App. 115, 924 S.W.2d 814 (1996). Although the Commission is not bound by medical testimony, it may not arbitrarily disregard any witness's testimony. *Reeder v. Rheem Mfg. Co.*, 38 Ark. App. 248, 832 S.W.2d 505 (1992).

Serna argues that there was substantial evidence before the Commission for it to determine that his back injury was caused by the blow to his head on January 21, 2005. We agree. The Commission, in its opinion of August 1, 2006, adopting the ALJ's opinion of February 15, 2006, reconciled the evidence by stating in pertinent part as follows:

The record in this claim is replete with inconsistencies and contradictions. However, I am persuaded that the primary reason for the conflicting and confusing record is based either in whole or in substantial part because of a language barrier between the claimant and the employer, as well as between the claimant and his authorized treating physicians. The record reflects that the claimant was involved in a significant work-related incident on January 21, 2005, which resulted in an injury at which time the claimant was provided first-aid by the employer. Further, the employer summoned a Spanish speaking translator because the claimant does not speak any English. As will be pointed out further below, the translator, José Garcia, in my opinion, created further communication problems because his understanding of English is also limited. Without the benefit of a qualified interpreter, communication was strained at best which prevented the claimant from receiving prompt, reasonably necessary medical treatment. Despite the assertions of respondents' witnesses that the claimant did not complain initially about a back injury, this is simply inconsistent with the record as a whole.

The opinion further explored the specific inconsistencies in the testimony presented at the hearing that are discussed above in each parties' arguments. It concludes by stating:

It is undisputed that the claimant sustained an injury as the result of a specific incident identifiable in time and place of occurrence on January 21, 2005. Despite respondents' contentions that the claimant did not complain about low back pain, the medical evidence supports multiple complaints of pain involving the claimant's head, neck, and back. Respondents' assertion that the claim cannot be proven by medical evidence supported by objective findings is also without merit. Dr. Granada, although admittedly an unauthorized treating physician, recommended that an MRI be performed before the claimant be permitted to perform his full-duty employment. Respondents refused to recognize Dr. Granada's recommendations. However, the claimant was ultimately returned to the company doctor, Dr. Williams, who ordered an MRI in June, 2005, for the claimant which revealed a mild diffuse disc bulge at L4-L5, without other significant abnormalities. At that time, Dr. Williams referred the claimant for other diagnostic studies and possible treatment, but apparently respondents had already given notice that it was denying any further medical treatment.

The opinion concludes that without giving the benefit of the doubt to either party, Serna satisfied each and every element necessary to establish compensability of his alleged back injury. In viewing the evidence presented in the light most favorable to the Commission's decision, and also acknowledging the Commission's province in determining questions of credibility, we hold that there was substantial evidence before the Commission to find that appellant's back injury causally related to the January 21, 2005, incident.

Affirmed.

BIRD and VAUGHT, JJ., agree.